

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

MONTE NIDO MISSOURI LLC, et al.,

Plaintiffs,

v.

ST. LOUIS COUNTY, MISSOURI, et al.,

Defendants.

No. 4:20-CV-1491 RLW

MEMORANDUM AND ORDER

Upon review of the Court file, the Court observes there has been no activity in this action since the filing of the returns of proof of service upon Defendants St. Louis County, Missouri, Gail Choate in her official capacity, and Stephanie Leon-Streeter in her official capacity, which state that these Defendants were served on October 20, 2020 (ECF Nos. 4-6). The Defendants have not filed answers or other responses to the Complaint and the time to do so has passed.

The Court further observes that although Defendants Choate and Leon-Streeter are sued in both their individual and official capacities in this action, Plaintiffs have not sought to serve them in both capacities. See Cheeks v. Belmar, 331 F.R.D. 499, 504 (E.D. Mo. 2019) (“[W]here a defendant is sued in both [her] individual and official capacities, . . . the “defendant is entitled to receive service of process in both capacities. Service in one capacity does not confer jurisdiction over the other capacity, even though the defendant is fully aware of the suit.”)

The Court interprets Plaintiffs’ October 20, 2020 service of summons and complaint on Defendants Choate and Leon-Streeter as attempted official-capacity service only. Although the summonses do not specify that Choate and Leon-Streeter are being served in their official capacities, they are directed to these Defendants using their official titles (Acting Director of the St. Louis County Department of Planning for Defendant Choate, and Acting Director of the St.

Louis County Department of Transportation & Public Works for Defendant Leon-Streeter), at the addresses of the St. Louis County Department of Planning and the St. Louis County Department of Transportation & Public Works, respectively (see ECF Nos. 5, 6).

Moreover, the October 20, 2020 service would appear to be insufficient for individual-capacity service on Defendants Choate and Leon-Streeter under Rule 4(e), Federal Rules of Civil Procedure, and Missouri Supreme Court Rule 54.13(b)(1), which require that summons and complaint be delivered to an individual personally; left at the individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there; or delivered to an agent authorized by appointment or by law to receive service of process. See Cheeks, 331 F.R.D. at 506.

Accordingly,

IT IS HEREBY ORDERED that Plaintiffs shall, within fourteen (14) days of the date of this order, file a motion for entry of default by the Clerk of the Court under Federal Rule of Civil Procedure 55(a) as to Defendant St. Louis County, Defendant Choate in her official capacity, and Defendant Leon-Streeter in her official capacity. **Failure to comply with this order may result in dismissal of the claims against Defendant St. Louis County, Defendant Choate in her official capacity, and Defendant Leon-Streeter in her official capacity, without prejudice.**



RONNIE L. WHITE
UNITED STATES DISTRICT JUDGE

Dated this 13th day of November, 2020.